

No. 89-672

Supreme Court, U.S.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1989

**CHURCH UNIVERSAL AND
TRIUMPHANT, INC., and
ELIZABETH CLARE PROPHET,**
Petitioners,

vs.

**LINDA WITT, Executrix of the
Estate of Gregory Mull,**
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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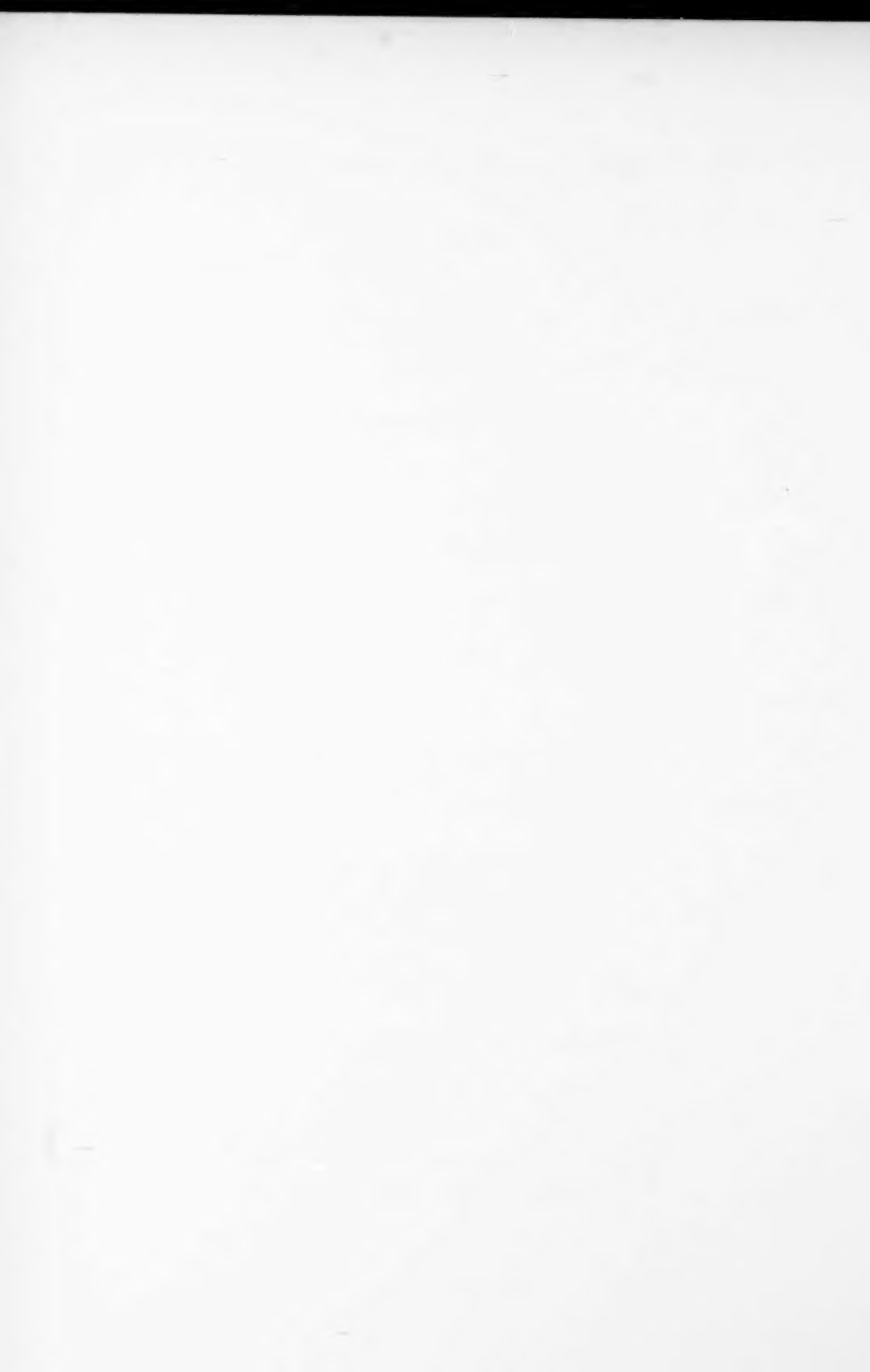
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Statement of the Case

Petitioners, Church Universal and Triumphant and Elizabeth Clare Prophet, hereinafter referred to as petitioners, appealed to the California Court of Appeal, Second Appellate District, from a judgment against petitioners and in favor of respondent, Gregory Mull,¹ entered on April 4, 1986 after trial by jury in the Superior Court of the state of California for the county of Los Angeles.

Respondent's cross-complaint in the trial court set forth causes of action for assault, breach of confidential relationship, cancellation of a written instrument, fraud, intentional infliction of emotional distress and

1. Gregory Mull died after judgment was entered in this case. Linda Witt, the executrix of the estate of Gregory Mull, succeeds Mr. Mull as respondent.

quantum meruit. The jury's verdict was in favor of respondent in the amount of \$521,000.00 compensatory damages against petitioners and \$521,000.00 punitive damages against each petitioner, for a total judgment of \$1,563,000.00.

The judgment of the Court of Appeal of California, Second Appellate District, affirming the judgment of the Superior Court of California, was entered on April 10, 1989. See Appendix C to Petition for Writ of Certiorari, p. 3a.² On May 8, 1989, the Court of Appeal denied a petition for rehearing filed by petitioners herein. Ibid. at 2a. On June 28, 1989, the Supreme Court of California denied a petition for

2. References to "__a" are to the Appendix to the Petition for Writ of Certiorari. Citations to "R.T. __" are to the 12 volumes of Reporter's Transcript on Appeal; citations to "Exhibit __" are to the Superior Court's designations of exhibits.

review filed by petitioners herein.

Ibid. at 1a. On November 15, 1989, the Clerk of the United States Supreme Court granted to respondent an extension of time to December 18, 1989, inclusive, within which to file a brief in opposition to the Petition for a Writ of Certiorari.

Response To Questions Presented

Introduction

Contrary to the assertions made in the Petition For Writ of Certiorari, respondent's theory of the case and the evidence which supported it shows that respondent did not challenge the validity, if any, of petitioners' religious beliefs, if any; rather, respondent challenged petitioners' conduct in using coercive persuasion, both psychological and physical, to obtain large sums of money from

respondent and others.

Petitioners engaged in, essentially, a land fraud scheme in which they used psychological and physical coercive techniques against certain church members in order to obtain the members' money on the pretext of developing land for the church. Petitioners did not build and did not intend to build; instead, petitioners' scheme ran as follows:

a. petitioners induced respondent, a professional architect, to draw plans for development of many elaborate buildings on the land; respondent's labor for the purported church consumed many years of hard work;

b. the voluminous plans drawn by respondent created an air of credibility for development of the many elaborate buildings;

c. petitioners pitched the land and the plans as a pretext to raise large sums of money from church members and others;

d. petitioners, who never intended to build on the land, personally pocketed the money for their own exclusive use and enjoyment, including private investments in commodities.

The California Court of Appeal concluded as follows:

"We first consider the facts regarding Mr. Mull's move to Camelot. He testified that he was excited and elated about being invited to draw plans for the "New Jerusalem" at Camelot. He estimated that it was a \$33,000,000 project and looked forward to designing a number of significant buildings. However, what Mull did not know at the time he was invited to move to Camelot was that CUT had already decided to abandon the New Jerusalem project. Thus, any hoped-for professional prestige through association with this project, as well as increased importance within CUT, was lost to Mull before he even put pen to paper. (Nonetheless, Mr. Mull's

plans were used by CUT to help raise funds even though the project had been secretly abandoned. With the help of Mull's drawings, one to two million dollars was raised within a few months and eight to ten million dollars more in pledges followed.)" See Appendix C to Petition for Writ of Certiorari, Opinion filed by California Court of Appeal, affirming judgment of trial court, filed April 10, 1989; see also R.T. 848.

Further, even if respondent's theory of the case may be characterized as addressing petitioners' sincerity with respect to petitioners' purported religious beliefs and not as addressing petitioners' conduct, such a theory is proper. United States v. Ballard, 322 U.S. 78, 86-88, 88 L.Ed. 1148, 1152-1155, 64 S.Ct. 882 (1944).

The California Supreme Court has recently concluded, in Molko v. Holy Spirit Assn. for the Unification of World Christianity, 46 Cal.3d 1092, 252

Cal.Rptr. 122, 762 P.2d 46 (1988), that religious motivation, even sincere religious motivation, is no defense against tort actions for damages based on fraudulent conduct and undue influence. Id. at 1119-1120.

In Molko, the California Supreme Court concluded that tort liability against a purported church for fraud in the inducement to join the church imposes no substantial burden on the church and is the least restrictive means available for the state to protect individuals and families from the harmful effects of fraudulent recruitment. Id. at 1117-1119.

Here, as in Molko, tort liability against a church for fraud and deceit in inducing respondent to pay money and to labor long hours in a land development project, which petitioners knew to be

phony and which petitioners intended solely as a means of raising money for their private profit only, imposes no substantial burden on the free exercise of petitioners' religion. Surely, petitioners cannot seriously argue that a land fraud scheme is part of their religion.

The trial in this case reflected respondent's charge that petitioners engaged in tortious conduct by subjecting respondent to extreme, various and protracted forms of psychological and physical coercive practices in order to overbear his will and obtain his money by way of a land fraud scheme.

What petitioners fail to recognize, even at this late date, is that they cannot disguise themselves in the First Amendment to escape liability in tort

for damages for fraud, deceit, undue influence, breach of confidence, public disclosure of private facts and other such actions. The disguise simply doesn't work.

1. Questions numbered 1 and 2.

Questions numbered one and two presented by petitioner are not presented by the record in this case. On the contrary, liability was imposed on the petitioner because it engaged in a fraudulent land scheme described above, and because it engaged in practices which can only be described as physical torture, war-like and involuntary. In particular, petitioner performed the following physical acts on respondent:

a. petitioners changed respondent's diet to one consisting exclusively of raw vegetables and frequent fasting;

b. petitioners compounded the inadequate diet with enemas and colonics, literally draining respondent of what little strength the diet regimen provided;

c. after the diet, enemas and colonics, respondent's strength was further sapped by long hours of decreeing and lectures, leaving him extremely receptive to influence by petitioners' use of hypnotic suggestion to respondent;³

3. In their Petition, petitioners described their use of hypnotism as a "religious ceremony." See Petition For Writ of Certiorari, p.8. Respondent's expert witness testified that petitioner's so-called "religious ceremony," a direct confrontation between petitioner, Prophet, and respondent, Gregory Mull, wherein Prophet goes into a screaming tirade while Mull kneels at Prophet's feet with his head bowed under a sword held by Prophet, was actually a purely secular act of hypnosis and shock induction. R.T. 1219 to 1219-9. It should be noted, petitioners withdrew all objections to the foregoing testimony. R.T. 1219-4 to 1219-5. The testimony

d. if the foregoing was not enough to overbear respondent's will, petitioners physically isolated respondent from his family and friends and involved respondent in extended programs of sleep deprivation, further restricting respondent's physical and mental capacity;

e. petitioners engaged respondent in the practice of saluting in the same physical manner as did Nazi soldiers to Adolf Hitler during World War II.

See Appendix C to Petition for Writ of Certiorari, pp. 13a-15a.⁴

was allowable because it was constitutionally permissible for respondent to submit to the jury that petitioners used the confrontation not for a religious purpose but for the purpose of hypnosis and shock induction to gain control of respondent. United States v. Ballard, supra, 322 U.S. 78, 86-88.

4. Hypnotism was induced by fear and decreeing. (R.T. 1219-8, lns. 5-15; see also Exhibit 95; Exhibit 107; R.T. 1218, lns. 8-28; R.T. 1242) There were many

2. Question number 3.

Question number 3 presented by petitioner, re: whether counsel may question, during argument to the jury, the sincerity of the purported religious beliefs of leaders of a defendant church, has already been answered by

decrees. (C.T. 712-717; 967-972) One decree included the "call to Saint Germain." (R.T. 918, lns. 13-23). A witness, Don St. Michael, stated the call in detail: "Hail, St. Germain" in multiples of three, including an extended-arm salute while standing. (R.T. 919, lns. 5-18) He stated that this call and salute was "terrorizing" because of its identity to the call and salute used by the Nazis in Germany. (R.T. 919, ln. 13) Respondent's expert testified that the tools used by petitioners to induce a state of hypnotism included Decrees (R.T. 1242), "terror" (R.T. 1248-1249) and "shock induction" (R.T. 1219-5, ln. 16, to 1219-8, ln. 15; 1222).

In view of the foregoing testimony, the jury could reasonably have concluded that petitioners used the process of hypnotism to exert undue influence, and that this process included terrorizing references to Nazi Germany. Terror, i.e. reference to Nazi Germany, was one method of inducing a hypnotic state and thereby exerting undue influence.

this Court in United States v. Ballard,
supra, 322 U.S. 78.

In Ballard, defendants had been
convicted in the district court for
using, and conspiring to use, the mails
to defraud the public by organizing and
promoting a so-called religious
movement, the "I Am movement." Id. at
79.

On appeal, the Ninth Circuit reversed
the convictions, holding that, since
allegations of fraud made it necessary
to prove that at least some of
defendant's representations were false,
the truth of defendant's religious
doctrines should have been submitted to
the jury. Id. at 83 and 86.

The Supreme Court remanded the matter
to the Ninth Circuit, reversing the
Ninth Circuit and holding that
defendant's purpose in using the mails,

not the verity of the doctrines which she espoused, was a proper issue for the jury.

Ballard is dispositive of the issues presented by petitioners. Under Ballard, it was clearly constitutionally permissible for respondent to submit to the jury that petitioners used the dictates of "Saint Germain" not to advance the religion which they espoused but, rather, to obtain and appropriate unto themselves respondent's and others' money in a phony land development scheme.

The Court of Appeal found in this case that counsel's argument to the jury was not prejudicial. See Appendix C to Petitioner for Writ of Certiorari, pp. 16a-17a. In fact, counsel cautioned witnesses and the jury that "beliefs" and "religion" were not on trial. See

Appendix C to Petition for Writ of
Certiorari, p. 16a; R.T. 2689.

Petitioners' reference to respondent's counsel's use of the phrase "tent show" is an example of the confusion created by petitioners as to whether beliefs or conduct were on trial. Petitioners described the "tent show" as if, by such description, respondent's counsel argued that the existence of the "Ascended Masters" should be questioned. Not so! A careful reading of the petition and petitioners' reference to respondent's counsel's argument reveals that petitioners omitted the content of four pages from the record, i.e. R.T. 2786-2790. In fact, respondent's counsel argued that petitioners had engaged in a "tent show," not by espousing various religious non sequiturs, but by engaging in the nefarious practice of pitching a

phony land development scheme in city
after city in order to defraud an
unsuspecting church membership and
public into putting millions of dollars
into petitioners' pockets. Compare

Petition For Writ of Certiorari, p. 11
with R.T. 2790. Respondent's counsel
said:

"Camelot was a scam. Lanello's
retreat was a scam. They raised money,
but they never built. Six, seven, eight
times they raised money, but they never
built. Now they are off to Montana.
And the New Jerusalem moves on. It is a
tent show. It is a great tent show."
R.T. 2790 at lines 8 through 12.

3. Question number 4.

Question number 4 presented by
petitioners, re: whether the judgment of
the trial court cannot be affirmed
because the trial court refused
petitioners' request for a special
verdict, and whether respondent has the
burden of proving harmless error under a
reasonable doubt standard, is not

presented by the record in this case.

First, it was within the discretion of the trial court to deny petitioners' request for a special verdict. G & M, Inc. v. Newbern, 488 F.2d 742 (9th Cir. 1973); Cal. Code Civ. Proc. §625.

Second, petitioners failed to argue on appeal that the trial court abused its discretion in denying petitioners' request for a special verdict. See Appendix C to Petition For Writ of Certiorari, p. 22a at n. 12. Hence, petitioners have waived their objection in this Court that the judgment cannot be affirmed because of the absence of a special verdict. Gonzales v. Missouri P.R. Co., 511 F.2d 629 (5th Cir. 1975); Sadowski v. Bombardier, Ltd., 539 F.2d 615 (7th Cir. 1976).

Third, respondent's counsel argued to the jury that the religious tenets of

Church Universal and Triumphant were not on trial. R.T. 2689. The California Court of Appeal reviewed the record and found that counsel's arguments were not prejudicial. See Appendix C to Petition for Writ of Certiorari, pp. 16a-17a.

Finally, the "harmless error" rule under Chapman v. California 386 U.S. 18, 24, 17 L.Ed. 705, 87 S.Ct. 824 (1967) necessarily applies only to criminal cases because individual liberty is at stake and entails a burden of the state to prove guilt beyond a reasonable doubt. Since respondent, a civil plaintiff, was required to prove his case by a preponderance of the evidence only, and since petitioners' liberty was not an issue, the rule under Chapman does not apply.

Further, respondent's counsel's argument to the jury, against which

petitioners ask this court to apply the harmless error rule under Chapman, was proper. Arguments to the jury, e.g. impeaching the credibility of a defendant's defense under the First Amendment speech and religion clauses and accusing the defendant of operating the purported religion as a "racket," a "flim flam scheme" and a "fakery," is proper. Ballard v. United States, 152 F.2d 941, 944 (9th Cir. 1945), revd. on other grounds (1946) 329 U.S. 187 [91 L.Ed. 181, 67 S.Ct. 261]. Under Ballard, the argument of respondent's counsel in this case was not prejudicial.

Statement of Facts

A. Petitioner Prophet dreams to be a millionaire.

Prior to 1974, petitioner, Elizabeth Clare Prophet, owned and controlled a purported "church," Church Universal and

Triumphant, and Summit University, a non-accredited school and self-styled seminary, both of which were located in Santa Barbara, California. R.T. 2606. Although Prophet's declared mission for her followers was the salvation of the planet earth (R.T. 917 lns. 3-12), Prophet did not sincerely believe this mission.

Actually, Prophet and her husband, Randall King, could not have cared less about the purported mission of the church. Prophet and King simply dreamed and sought to be millionaires (R.T. 889, lns. 6 - 24). Toward this end, they sent their 'archbishop' Monroe Shearer, to fund raising school. R.T. 2002 lns. 19-24. Under the umbrella of the church, Prophet and King conducted fund raising drives in which they represented that the funds raised would be used to

build facilities. R.T. 2031 ln. 28 -
2033 ln. 15; R.T. 848 lns. 17-28.

Petitioners had a history of fund
raising without building, with such
projects as "Land of Lonello," "The
Idaho Montana Project," "The Holy Spirit
Project," and "The Pasadena Project."
R.T. 2654 ln 21 -2661 ln 3.

In fact, the funds were diverted by
Prophet and King for their own personal
benefit in various types of speculative
financial ventures such as trading in
commodities futures and buying or
leasing undeveloped land. R.T. 788-794;
841; 889. Typically, Prophet and King
pitched headquarters in a local
community, proselytized a grab bag of
religions, cultures and myths, e.g.
christianity, buddhism, English legends,
Greek mythology and American heroes
(C.T. 301-344; 719-781; 819-826; 916-

919; 921-1019), obtained donations for the purported church facilities and, after raising large sums of money, relocated to another community in a distant state to repeat the tent show.

B. Prophet dominates her church and its members.

Elizabeth Clare Prophet had the power to resolve all disputes within the church and directed all of its financial matters. R.T. 750 ln 10 - 751 ln 20; 787 ln. 23 - 788 ln. 17. She exerted substantial control over the lives of her followers; she instructed certain of her followers to lie, manipulate and control other church members for her benefit. R.T. 410-416; 883 lns. 12-26; R.T. 884 lns. 16-25; R.T. 885 lns. 17-21; R.T. 886 ln 13 - 887 ln 22; R.T. 900 ln 15 - 901 ln 22; R.T. 2557. She controlled the lives of all students of Summit University and church staff, even

to the point of dictating who could marry whom and when. R.T. 125 ln. 23 - 127 ln. 20; 129 ln. 13 - 130 ln. 5; 2548 ln. 3 - 2549 ln. 10.

C. Prophet targeted Mull.

In 1974, respondent, Gregory Mull, was a professional architect in San Francisco, California. R.T. 97 lns. 3-12. He designed his own home which was featured in at least one publication and had achieved success and public recognition. R.T. 97 Ln 26 - 98 ln 28. He was a religious man, maintaining a meditation and study group in his home before he became acquainted with petitioners, Church Universal & Triumphant and Elizabeth Clare Prophet, in 1974. R.T. 70 ln 28 - 71 ln 20.

In 1975, respondent attended a 12 week session at Summit University for the purpose of learning petitioners'

teachings. R.T. 87 ln 15 - 88 ln 2. In applying to Summit University, respondent was requested to disclose his personal financial information. R.T. 862 lns. 3-22. The financial information requested on the application for Summit University was used as a tool by petitioners to determine which individuals to target; it was petitioners' practice to target individuals who had money or property for the purpose of obtaining same. R.T. 815 ln 27 -816 ln 26; 837 ln. 3 - 16.

D. Petitioners subject Mull to extreme, various and protracted forms of coercive persuasion.

During his session at Summit University, respondent was exposed to sleep deprivation, separation from family and friends, communication limitations, sexual limitations, decreeing, fasting, colonics, hypnotism

and hypnotic techniques, including shock induction, designed to make respondent subservient to petitioner, Elizabeth Clare Prophet, and ultimately subject to her control, manipulation and undue influence. R.T. 87-97; 115-117; 251-253; 270-271; 276-278; 290-294; 388-391; 450; 806-807; 1218-1223.

After this initial period of indoctrination, respondent returned home subservient to petitioners' domination. R.T. 948 ln 19 - 949 ln 2; R.T. 115 ln 27 - 123 ln. 2. Between 1975 and 1977 he was befriended by Prophet and King. R.T. 115 ln. 27 - 123 ln. 2; 824 ln. 16 - 825 ln. 18.

In 1977, respondent returned to Summit University for a similar period of indoctrination after which he again returned home. R.T. 123 ln 21 - 124 ln 13.

E. Petitioners lure Mull into the phony Camelot project.

In 1977, petitioners had a fund raising project called Camelot in which they claimed to be collecting donations to build church facilities on land which they owned in Calabasis, California.

R.T. 2609 lns. 3-4. To assure the appearance of authenticity in the project, they went to the elaborate extent of hiring an architectural firm at a cost of \$50,000.00 to create a "master plan" (Exhibit 1) to develop the "New Jerusalem" (R.T. 2017 lns. 14-25) at a projected cost of \$33,900,000.00.

R.T. 543 lns. 24-26. Petitioners knew they would never build the New Jerusalem because of government interest in the land and an inability to obtain permits as a result. R.T. 2031 ln. 28 - 2033 ln. 15; R.T. 848 lns. 17-28.

Facing an immediate outlay of \$150-200,000 to go further with the bogus architectural work, petitioners decided to enlist the architectural services of respondent. R.T. 846 ln. 22 - 847 ln. 22. Based on respondent's file from Summit University, petitioners knew respondent was an architect and completely devoted to petitioners. Petitioners falsely represented to respondent that they intended to build the New Jerusalem at Camelot, that respondent would be the architect and that petitioners would pay respondent for his service. R.T. 853 ln. 26 - 854 ln. 5; R.T. 843 ln. 23, 845 ln. 7.

Respondent went to Camelot under the belief that he was the professional architect for the New Jerusalem, a project which he knew that, when completed, would be an extremely

prestigious and impressive accomplishment. R.T. 133 ln. 3 - 137 ln. 26; R.T. 953 lns. 3 - 19; R.T. 2663 lns. 11 - 19. Conversely, petitioners knew "considerably before" inviting respondent to Camelot that they were not going to build and that they were looking to use the proceeds from fund raising to acquire more land. R.T. 848 lns. 17-28. In taking the job as architect for the development of Camelot, respondent told petitioners the project would take a minimum of four years and that they would have to pay his expenses for that period. R.T. 150 ln. 8 - 153 ln. 18; R.T. 843 ln 23 - 844 ln 25. Petitioners agreed to respondent's terms but never intended to fulfill the commitment or to disclose to respondent that he would be devoting his time to a project that would never be

built. R.T. 151 ln. 1-15. Petitioners falsely told respondent that they would pay his monthly expenses, maintain his home in San Francisco and pay his travel expenses back and forth while he was winding up his business in San Francisco; in exchange respondent was to move onto "Camelot" as soon as possible to work full time doing architectural renderings for the "New Jerusalem." R.T. 2664-lns. 3 - 15. Respondent's expenses were estimated at a minimum of \$2-3,000 per month. Respondent was pleased to be of service and moved to Camelot in January 1979. R.T. 192 ln. 22 - 193 ln. 5. Respondent's normal and customary charge would have been \$40-75 per hour, and because of his commitment to the church he was willing to work for \$35 per hour. In the alternative, respondent testified that a 7-10% fee

based on the total cost of the project was a customary and standard fee. In this instance, such a fee would amount to 2.5 to 3 million dollars. R.T. 355 lns. 14-23; R.T. 355 lns. 1-8.

\$8 to \$10 million was raised on the Camelot project. R.T. 905-906.

Respondent created numerous plans for the project. See Exhibit 35.

F. Petitioners defrauded respondent.

After moving to Camelot, petitioners started changing the rules and systematically maneuvered respondent to sell his home and donate all of his money and time to petitioners. R.T. 850 ln 12 - 852 ln 27. By deliberately delaying payments to respondent on his expenses, they damaged his credit reputation and placed him under severe financial and emotional stress. R.T. 231 ln 17 -232 ln 2; 852 lns. 1 - 21.

Finally, in September 1979, under severe financial and emotional stress, deliberately created by petitioners, respondent signed a note promising to pay \$32,885.40 to petitioners so that petitioners would continue to pay respondent's creditors. Subsequently, respondent signed a second note for the sum of \$4,546. C.T. Vol.2 547, 555; R.T. 193 ln 22 - 194 ln 25.

In addition to signing the notes, respondent agreed under pressure from petitioners to sell his home and pay them a portion of the proceeds of the sale. R.T. 156 ln 4 - 157 ln 4.

Respondent continued to live and work on Camelot until May, 1980, under the false assumption he was working on the "New Jerusalem." R.T. 466 lns. 1-3; 133 lns. 5-24; 195 lns. 15-18. After respondent signed the promissory notes,

petitioners refused to advance any further sums of money and in April, 1980, respondent was forced to sell his home for \$199,000.00, \$40,000 less than he expected. R.T. 398 lns. 14-17.

During the period from October, 1979, through April, 1980, respondent was forced to borrow money from friends and family. R.T. ln. 1 - 197 ln. 11. Respondent had been led to believe that he was under no obligation to repay the money paid him for his expenses and services. R.T. 194 lns. 6-9; 196 lns. 7-12. Petitioners then expelled respondent from Camelot, giving him two days notice. R.T. 195 lns. 1-5.

Within three weeks of his expulsion from Camelot, respondent was summoned on June 6, 1990 to a tribunal with petitioners, church leader Elizabeth Clare Prophet, church president Edward

Francis and church archbishop Monroe Shearer. Prophet sat or paced behind a desk in front of the tribunal. Opposite the desk were three chairs: respondent, Gregory Mull, sat in the center chair, with Francis and Shearer sitting at each side of Mull. Convinced that all would be made right, respondent went to the meeting at Camelot and was manipulated out of his last \$5,500.00. R.T. 194 ln 17 - 200 ln 26; R.T. 569 ln 1 - 704 ln 13.

G. Petitioners ridiculed and extorted respondent.

During his previous attendances at Summit University, respondent wrote a "clearance letter" which he understood to have the same sanctity and secrecy of a confession. R.T. 103 ln 7 - 104 ln. 5; 821. In the letter he divulged private information, including homosexual experiences which occurred when he was

in his early 20s. R.T. 104 ln 6 - 105 ln 6. Respondent never discussed these experiences with anyone except Prophet. R.T. 103 ln. 27 to 104 ln. 5. After being expelled from the church, he was confronted and embarrassed by public disclosures of homosexuality by church members. R.T. 105 lns. 2-6; R.T. 224 lns. 2-17. Although it was represented that all clearance letters were destroyed by fire, in fact many were kept and freely discussed among church officials. R.T. 821 ln. 11 - 823 ln. 1. The knowledge contained within many letters was used in dealing with certain church members in order to control and manipulate them. R.T. 494 ln 24 - 495 ln 16.

H. Petitioners assaulted respondent.

After being sued by petitioners in spring of 1981, respondent went to a

square dance at Camelot in response to a public invitation and in the hope of meeting petitioner, Elizabeth Clare Prophet, for purposes of resolving their disputes. C.T. Exhibit 2, 342; R.T. 220 ln. 17 - 221 ln. 10.

Respondent was accompanied by his daughter, her husband, the mother of a church member, and a reporter from a local newspaper, all of whom observed what transpired. At the main gate respondent was confronted by guards and a number of men whom he knew to be Judo experts. They stood erect, put their hands up and came toward respondent's group. Respondent was in extreme fear of being attacked. In the months following the assault on respondent, the inside of his car was sprayed with oil; the electrical system was altered, and a bottle containing gasoline was placed

along side of the manifold, a crude bomb. R.T. 225 lns. 9-13; R.T. 220 ln. 25 - 221 ln. 21.

I. Respondent breaks down emotionally and physically.

In view of all of the stress petitioners brought to bear on respondent, he commenced psychological therapy from Kathleen T. Levy, MFCC. R.T. 1209 - 1264. Additionally, respondent was terrorized dramatically when, in or about April or May of 1984, petitioner Prophet labeled him the "Beast of Blasphemy." R.T. 1224 ln 10 - R.T. 1225 ln 2. "The Beast of Blasphemy" was considered to be the enemy of the church and was to be sought out and destroyed. R.T. 1224 ln 10 - 1225 ln 2.

The stress caused respondent to suffer an anxiety attack, much like a stroke, requiring hospitalization and

intensive care. R.T. 1143 ln 25 - 1144 ln 21; 1226 - 1227. Because of his condition respondent feared for his life and his family's safety. Respondent's doctor, H. Afshar M.D., recommended psychiatric treatment. R.T. 1145 ln 25 - 1146 ln 7.

In the end, respondent developed Multiple Sclerosis. R.T. 1146 ln 11 - 1147 ln 16; R.T. 1149 lns. 1-21. The stress he experienced may have aggravated his condition. R.T. 1147 lns. 6-10.

J. Respondent recovers damages at trial.

Respondent stated several causes of action against petitioners for assault, breach of fiduciary relationship, cancellation of a written instrument, fraud, intentional infliction of emotional distress and quantum meruit.

The jury's verdict was in favor respondent in the amount of \$521,000.00 compensatory damages against both petitioners and \$521,000.00 punitive damages against each petitioner, for a total judgment of \$1,563,000.00.

K. Respondent dies.

Approximately 2 to 3 months after the trial and judgment in this case, Gregory Mull, once a healthy and respected architect, died. The immediate cause of death was listed as unknown.

Argument

I.

**THE FIRST AMENDMENT DOES
NOT GRANT IMMUNITY TO A
CHURCH FOR LIABILITY
BASED ON TORTIOUS
CONDUCT.**

During the course of the trial the court, petitioners and respondent reminded the jury that the religious beliefs and practices of the church were

not in issue or on trial. At no time were any of the beliefs or practices questioned and the jury was never asked to determine the truth or the falsity of those beliefs.

Respondent did request the jury to examine petitioners conduct in coercively persuading respondent to give petitioners all of his time and money for a phony land development scheme. Petitioners are not entitled to a First Amendment defense for assault, breach of a fiduciary relationship, fraud, intentional infliction of emotional distress, or undue influence. Molko v. Holy Spirit Assn. for the Unification of World Christianity, supra, 46 Cal.3d 1092. The obvious reason for this rule is that such tortious conduct cannot be shown to be a sincerely held religious belief not in violation of public

policy. Id. at 1112-1113 citing United States v. Ballard, supra, 322 U.S. 78, 86-88.

A. Respondent was damaged not by the purported religious content of the decrees but by petitioners' conduct in using the decrees to perform hypnotism.

Respondent's expert testimony explained how petitioners used decrees in hypnosis. In their Petition, petitioners referred to one such decree as the "Insert on Personal And Impersonal Hatred." [Petition For Review, p. 11]. Prophet's former husband, Randall King, testified to the petitioners' use of decrees to control, direct and punish church members.

Petitioners use of the word "prayer" as interchangeable with "decree" is not accurate. See Exhibit 120, C.T. 934-935. What was introduced into evidence were decrees. Indeed, although petitioners preferred in their Petition

to refer to the decree as a "prayer," they were not always able to remain loyal to the nomenclature. Petitioners' freudian slip may be found in the Petition, p. 13 at line 6 ("evaluate this decree"). In any event, the difference in such nomenclature is immaterial, as petitioners were sued based on their conduct, not their religious motives, if any. The jury was not asked to judge the truth or falsity of the decrees. The unequivocal testimony of respondent's witnesses was that the decrees were used as a hypnotic technique to maintain control over the members. R.T. 1218 lns. 8-28. The decrees were never placed into evidence to question the validity of the beliefs of the church and its constituents, nor was the jury ever asked to rule on the validity of the beliefs and practices of the church.

B. Petitioners' origin was not ridiculed.

Petitioner church objected to evidence concerning its origin from the "I Am Movement."

Evidence of the origin of petitioner church was important background information. Without such information, no one would have understood that petitioner church was really a "mail order operation" for which Prophet had no intention of building the so-called "New Jerusalem."

Further, evidence of the origin of petitioner Church was innocuous at best. Clearly, there is nothing sinister about a religion having its origin from another movement. Most religions are offshoots of prior religions or beliefs. The questions asked provided background information and traced the history of petitioners.

C. Closing argument was not prejudicial.

Petitioners argued that respondent's counsel attacked the validity of their religious beliefs by arguing that petitioners were not in the "business" of religion but were in the business of "raising money and not building" (R.T. 2726 lns. 19 -2727 ln.1), conducting nothing more than a "tent show" (R.T. 2790 lns. 8-12), much like a group of gypsies might pitch camp, dance for the money people throw and then pack it up for the next town.

The focus of counsel's argument was and is that petitioners raise funds by pitching a temporary headquarters, promoting the phony land development scheme for the money people throw, and then packing it up for the next town. This argument was clearly fair advocacy.

Grimshaw v. Ford Motor Co., 119

Cal.App.3d 757, 798-799, 174 Cal.Rptr. 348 (1981), citing Ballard v. United States, 152 F.2d 941, 943 (9th Cir. 1945) and citing other numerous cases.

In Grimshaw, the appellate court said in relevant part:

"The right of counsel to discuss the merits of a case, both as to the law and facts, is very wide, and he has the right to state fully his views as to what the evidence shows, and as to the conclusions to be fairly drawn therefrom. The adverse party cannot complain if the reasoning be faulty and the deductions illogical, as such matters are ultimately for the consideration of the jury." Grimshaw v. Ford Motor Co., supra, 119 Cal.App.3d 757, 798-799.

In Ballard, the Ninth Circuit further considered, on remand from the Supreme Court's opinion (discussed, supra), the trial court's record concerning defendant's allegedly bogus "I Am movement." At trial, counsel in opening argument told the jury:

"The government claims in this case though, gentlemen, that this Ballard racket, as we might refer to it now in argument, is a flim flam scheme that has been unparalleled in history. These defendants have been the most successful fakers in the knowledge of the history of fakery, and I think that is a tribute to the principal organizer Edna W. Ballard." Ballard v. United States, supra, 152 F.2d 941, 944, revd. on other grounds (1946) 329 U.S. 187 [91 L.Ed. 181, 67 S.Ct. 261].

The Ninth Circuit said that the foregoing argument was an "honorable" exchange of argument and did not constitute reversible error. Id. As in Ballard, the jury in this case was reminded by the court and counsel during trial, before final arguments and in jury instructions that the truth or falsity of petitioners' religious beliefs was not in issue. The conclusion in Ballard, cited with approval in the Grimshaw case, that the above type of argument by counsel is permissible, is directly on point and

clearly disposes of any reason for review of this case concerning counsel's arguments.

II.

**SINCE RESPONDENT'S CASE
DID NOT REST SOLELY, OR
EVEN PRIMARILY, ON
THREATS OF DIVINE
RETRIBUTION, THERE WAS NO
REVERSIBLE ERROR.**

Petitioners argued that the entire judgment must be reversed if it may have been based, even in part, on petitioners' threats against respondent of divine retribution.

The short response is that respondent did not claim that he suffered damages from threats of divine retribution. Instead, respondent claimed damages as a result of petitioners' conduct in bilking him out of his life's savings, in assaulting him and in publicly disclosing private facts about him. The foregoing have nothing to do with divine

retribution. Petitioners damaged respondent by duping him into believing that he was needed as an architect for the New Jerusalem, when in truth and in fact petitioners had no intention of building and only wanted respondent for his professional credentials, work product and money.

Further, the argument that evidence of threats of divine retribution is inadmissible is soundly defeated by Molko v. Holy Spirit Assn. for the Unification of World Christianity, supra, 46 Cal.3d 1092, 1122. Evidence of an "atmosphere of coercive persuasion" is relevant in assessing whether or not the conduct of church leaders and officials is extreme and outrageous. Id. Hence, the jury could properly consider whether petitioners' use of fear and hatred was extreme and

outrageous, justifying damages for emotional distress, in addition to economic loss, based upon petitioners' conduct in bilking respondent out of his every penny in the phony New Jerusalem land development scheme.

III.

THE USE OF GENERAL VERDICT FORMS DOES NOT REQUIRE REVERSAL.

Petitioners argued that damages cannot be ascertained because the court refused to submit a special verdict form. The decision to submit a special verdict is entirely in the discretion of the trial court. (Cal. Code Civ. Proc. §652). Reversal may not be predicated upon the court's refusal to submit a special verdict. Stone v. Foster, 106 Cal.App.3d 334, 350, 164 Cal.Rptr. 901 (1980). Further, as argued above there is ample evidence to support the award

of damages.

Conclusion

The Petition for Writ of Certiorari
must be denied.

Respectfully submitted,

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Counsel for Respondent



No. 89-672
IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1989

Church Triumphant and Universal, Inc., et al.,
Petitioners,
vs.
Linda Witt, etc.,
Respondent.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss:

Esiquia Gonzales, being first duly sworn, deposes and says: I am a citizen of the United States and a resident of or employed in the county aforesaid. I am over the age of 18 years and not a party to the said action. My business address is 3550 Wilshire Boulevard, Suite 916, Los Angeles, California 90010. On this date, I served the within BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI on the interested parties in said action by placing three true copies thereof with first-class postage fully prepaid, in the United States post office mailbox at Los Angeles, California, in sealed envelopes addressed as follows:

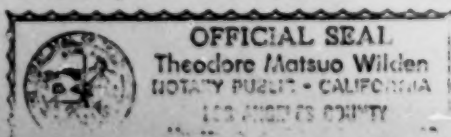
ERIC M. LIEBERMAN, P.C.
RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN
Fifth Floor
740 Broadway
New York, NY 10003

That affiant makes this service, for LAWRENCE LEVY, Counsel of Record for Linda Witt, etc., Attorney for Respondent herein, and that to the best of my knowledge all the persons required to be served in said action have been served.

Esiquia Gonzales
Esiquia Gonzales

On December 14, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Esiquia Gonzales, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

Witness my hand and official seal.



Theodore Matsuo Wilden
Notary Public in and for
said county and state